

§ 983.71 Relationship with the California Pistachio Commission.

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

Subpart—Rules and Regulations**§ 983.138 Samples for testing.**

Prior to testing, a sample shall be drawn from each lot and divided into two subsamples to be used to test pistachios for aflatoxin and for minimum quality. The lot subsamples shall be of sufficient weight to comply with Tables 1 and 2 of § 983.38 and Table 4 of § 983.39: *Provided*, That lots of pistachios which are intended for dyeing or color-coating shall be sampled for minimum quality after the dyeing or color-coating process.

[70 FR 61226, Oct. 21, 2005]

§ 983.141 Procedures for exempting handlers from minimum quality testing.

(a) *Exemption procedures.* The Committee, or its duly authorized agents, shall notify all handlers each year of the opportunity to apply to be exempted from minimum quality testing and handlers shall submit such requests on forms furnished by the Committee. The deadline for submission shall be August 1. The Committee, or its duly authorized agents, shall:

(1) Promptly review all exemption applications received. In reviewing applications for exemption, the Committee, or its duly authorized agents, shall determine that the quantity of assessed weight pistachios handled during the prior production year was less than 1 million assessed weight pounds and that the applicants are in compliance with the order's reporting requirements and the provisions of § 983.41. Handler compliance will be determined through handler audits;

(2) Complete the review and approve or disapprove requests for exemptions by August 20;

(3) Maintain complete files detailing the reason(s) for the approval or disapproval of each application for at least three years beyond the crop year of applicability; and

(4) Notify in writing all applicants by August 30 of the approval or disapproval of their requests together with the reason(s) for disapproval, if applicable.

(b) *Revocation of exemptions.* A handler's exemption shall be revoked by the Committee, or its duly authorized agents, if the handler fails to provide reports required under § 983.147, or has not complied with the provisions on minimal quality testing in § 983.41, of this part. Additionally, the Committee, or its duly authorized agents, shall revoke an approved exemption when a handler audit reveals that a handler has handled a million pounds or more of assessed weight pistachios during the current production year. The revocation of a handler's exemption shall be made in writing to the handler and shall specify the reason(s) for and the effective date.

(c) *Appeals.* (1) Any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked, may appeal to the Secretary, within 20 days after notification of the Committee's, or agents of the Committee's, decisions. All appeals shall be in writing. When requested by the Secretary, the Committee, or its duly authorized agents, shall forward a file with all pertinent information related to any handler appeal. The Secretary shall inform the handler and all interested persons of the Secretary's decision.

(2) If handlers do not file an appeal or if their appeal is denied by the Secretary, they shall present all remaining lots of pistachios in inventory for minimum quality testing before moving the pistachios into the channels of commerce.

[70 FR 42259, July 23, 2005]

§ 983.143 Reinspection.

(a) Any lot of inshell pistachios that is pin-picked, hand-sorted, color-sorted, and/or resized is considered to be "materially changed." Pistachios which are roasted, salted, flavored, air-legged, dyed, color-coated, cleaned, and

otherwise subjected to similar processes are not considered to be materially changed.

(b) Each handler who handles pistachios shall cause any lot or portion of a lot initially certified for aflatoxin, quality, and size requirements, and subsequently materially changed, to be reinspected for aflatoxin, quality, and size, and certified as new lots: *Provided, That:*

(1) Pursuant to § 983.41(b) handlers exempted from minimum quality testing shall pull or have pulled representative lot samples for aflatoxin testing of any materially changed lots intended to be shipped into the domestic channels of commerce. Such representative lot samples shall be divided into two parts, one part shall be retested for aflatoxin and the other part shall be maintained for 90 days at the handler's facilities. Handlers shall make the samples maintained for 90 days available for auditing by the Administrative Committee for Pistachios; and

(2) Handlers exempted from order requirements under § 983.70 are exempted from all reinspection requirements.

[70 FR 61226, Oct. 21, 2005]

§ 983.147 Reports.

(a) *ACP–2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots which fail to meet the order's minimum quality requirements by completing sections A and B of this form. Handlers shall furnish this report to the committee no later than 10 days after test completion. Each USDA approved aflatoxin testing laboratory shall complete section C of this report and forward this report and the failing aflatoxin test results to the committee and to the handler within 10 days of the test failure.

(b) *ACP–3, Failed Lot Disposition and Rework Report.* Each handler who reworks a failing lot of pistachios shall complete this report and shall forward it to the committee no later than 10 days after the rework is completed. If rework is not selected as a remedy, the handler shall submit the form to the committee office within 10 days of disposition of the lot.

(c) *ACP–4, Federal Marketing Order Exempt Handler Notification.* Each handler

who handles 1,000 pounds or less of dried weight pistachios in a production year shall complete and furnish this report to the committee no later than November 15 of each production year.

(d) *ACP–5, Minimal Testing Form.* Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request an exemption under the minimal quantities provisions (Section 983.41) of the order shall furnish this report to the committee office no later than August 1 of each production year.

(e) *ACP–6, Inter-handler Transfer.* Each handler who transfers uninspected pistachios to another handler within the production area shall complete the ACP–6 and sign Part A. The transferring handler shall forward the original ACP–6 and one copy to the handler who receives the uninspected pistachios. The transferring handler shall furnish one copy of ACP–6 to the committee within 30 days of the transfer. The handler receiving the uninspected pistachios (receiving handler) shall sign Part B of the original ACP–6 and shall file it with the committee within 30 days of the transfer.

(f) *ACP–7 Monthly Report of Inventory/Shipments.* Each handler of pistachios shall file this report with the committee by the 10th day of each month for the previous month's inventory and shipment information.

(g) *Exemptions.* Handlers, who handle 1,000 pounds or less of dried pistachios during any marketing year, are exempt from filing all forms with the exception of the ACP–4.

(h) *Records.* Each handler shall maintain all records of pistachios received, held, shipped, and disposed of for at least 3 years following each crop year to show compliance with the marketing order provisions.

[70 FR 39907, July 12, 2005]

Subpart—Assessment Rate

§ 983.253 Assessment rate.

(a) On and after September 1, 2004, a continuing assessment rate of \$0.0014 per pound of assessed weight pistachios is established for California Pistachios. The assessment obligation of each handler shall be computed by applying the